IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2869 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHURALAL ARJANBHAI PARSANIYA

Versus

GOVT OF GUJARAT

Appearance:

1. Special Civil Application No. 2869 of 1994

MR BIPIN P JASANI for Petitioner No. 1

Ms. Shraddha Trivedi, AGP for Respondents No. 1-2

DS AFF.NOT FILED (R) for Respondents No. 3-5

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 20/12/2001

ORAL JUDGEMENT

Heard learned advocate Mr. Bipin Jasani for the petitioner and Ms. Trivedi, the learned AGP for the respondents No. 1, 2, 3 and 4. Though notice of rule has been served upon respondent No.5, no one has appeared on behalf of respondent No.5. In this petition, rule has been issued by this court and ad.interim relief in terms of para 12(C) has been granted by order dated 1st March, 1994. Brief facts of the present petition are as under:

Initially, the petitioner was appointed on 8.1.1962 on the post of assistant teacher in respondent No.5 school which is a registered and recognised non

government secondary school. Thereafter, the petitioner was promoted with effect from 17.6.1962 as head master in the respondent No.5 school and accordingly, the petitioner was paid the pay scale of Rs.2000-3500 with effect from 1.1.1986 under the Revision of Pay Rules, 1986. The date of birth of the petitioner is 4.5.38 and the petitioner had continued as head master till the date of voluntary retirement i.e. 31.3.1990. According to the petitioner, as he joined the service as an assistant teacher with effect from 8.1.1962 and has completed more than 28 years of service, the petitioner was eligible to retire voluntarily from service in view of the Voluntary Retirement Scheme formulated by the State of Gujarat vide Government Resolution dated 3.2.1978 and, therefore, the petitioner vide letter dated 7.11.1989, gave notice to the manager of the respondent no.5 school which was a notice for voluntary retirement with effect from 31.3.1990 a.n. Thereafter, the competent authority namely the District Education Officer, Jamnagar, after obtaining necessary approval from the Director of Pension and Provident Fund, has permitted the petitioner to retire voluntarily from service as head master with effect from 31.3.1990 a.n. by office order dated 22.2.1990. In the said office order, it was resolved that the petitioner is eligible and entitled to get the benefits of notional service and increment till 7.1.1995. Thereafter, pension papers of the petitioner were accordingly prepared by the competent authority and for the purpose of calculation of pension, notional service with the benefits of increment have been calculated till December, 1994 and accordingly, the basic pay of the petitioner was fixed at Rs.3400,.00 in the pay scale of Rs.2000-3500. According to the petitioner, the competent authority namely the District Education Officer has also issued necessary certificates and has made counter signature in the service book of the petitioner. The Accounts Officer of the Directorate of Pension and Provident Fund has sanctioned pension of the petitioner with effect from 1.4.1990 and the pension of the petitioner was fixed at Rs.1657.00 with effect from 1.4.1990 and an amount for commutation at Rs.552.00 has also been fixed and after commutation of pension, net amount of pension payable to the petitioner was fixed at Rs.1105.00. The amount of gratuity of Rs.56100.00 has also been sanctioned and amount of Rs.83,859.84 ps. was authorized for commutation of pension as well as family pension was also sanctioned vide order dated 5.4.1991 and accordingly, the petitioner was getting pension in accordance with the order dated 5.4.1991 with effect from 1.4.1990. Thereafter, all of a sudden, by order dated 14.5.1993 passed by the Accounts Officer of the office of

Directorate of Pension and Provident Fund, regular pension of the petitioner was withheld and recovery was raised on the ground that the petitioner was on leave at the time of retirement and, therefore, benefit of notional service and the benefit of notional increment cannot be available to the petitioner. Said officer has, therefore, raised recovery by order dated 14.5.1993 and thus, the pension of the petitioner was withheld with effect from June, 1993 without any justification. Said order dated 14.5.1993 is under challenge in this petition before this Court.

As stated earlier, initially, by order dated 1.3.1994, while issuing rule in this petition, ad.interim relief in terms of para 12(C) of the petition has been granted whereby implementation of the order dated 14th May, 1993 has been stayed and it was further directed to the respondents to release the amount of petitioner during the pendency of this petition. Therefore, during the course of hearing, learned advocate Mr. Jasani has submitted that in view of the interim order passed by this court, the petitioner is receiving pensionary benefits as per the first order dated 5th April, 1991.

Learned advocate Mr. Bipin Jasani appearing for the petitioner has submitted that the order dated 14th May, 1993 is having adverse effect and civil consequences upon the legal rights of the petitioner and, therefore, such an order cannot be passed by the authority without giving reasonable opportunity of hearing to the petitioner. This specific contention in terms has been raised by the petitioner in para 9(d) of the memo of petition. Learned advocate Mr. Jasani has, therefore, submitted that the impugned order dated 14th May, 1993 is contrary to the principles of natural justice. He has also submitted that even considering the merits of the matter also, it is contrary to the Voluntary Retirement Scheme introduced by the Government vide Government Resolution dated 3rd February, 1978 as well as the relevant provisions of rule 57A, sub rule (2) of the Bombay Civil Services Rules, 1959. He has also relied upon the relevant terms of the Government Resolution dated 3rd February, 1978, item No. (iv) and (viii) which are relating to 'leave not due' and also weightage of notional service of five years to which an employee is entitled in case when the voluntary retirement is sanctioned by the authority. Therefore, he has submitted that in view of this relevant circular dated 3rd February, 1978 and also looking to rule 57A sub clause (ii) of the Bombay Civil Services Rules, 1959, the petitioner is entitled to draw the pension as per the fixation of pension done initially by the respondent

authority by order dated 5th April, 1991 and, therefore, no change is required to be made and such change sought to be made by order dated 14th May, 1993 is contrary to the relevant Government Circular and relevant rules as well as the principles of natural justice. However, Mr. Jasani has submitted that after the order passed by the respondent on 14th May, 1993, the petitioner has made representation to the respondent authority, one by letter dated 21.8.1993, another by letter dated 6th September, 1993 and 24th October, 1993 but of no avail and no response to such representations has been given by the respondent authority and the representations made by the petitioner have remained undecided and, therefore, the authority may be directed to consider and decide the representations of the petitioner within some reasonable period in light of the Government policy of retirement as per the Government Resolution dated 3rd February, 1978, considering item No. (iv) and (viii) and relevant rule 57A (ii) of the Bombay Civil Services Rules, 1959. He has also submitted for directing the authority to hear the petitioner personally and give him reasonable opportunity to submit his case before the authority in accordance with the principles of natural justice.

As against that, learned AGP Ms. Trivedi appearing for the respondents has submitted that initially pension of the petitioner was fixed by order dated 5.4.1991 and, thereafter, considering the fact that the petitioner was on leave from 1.10.1988 to 31.3.1990, that period of leave was not due to the petitioner and the petitioner after completing leave period has not returned to duty and, therefore, according to the respondent, the petitioner was not entitled to benefit of notional services and increments and, therefore, the respondents were right in passing the impugned order in view of the fact that the petitioner has remained on leave prior to the actual date of retirement, for a period of one and half year and, therefore, subsequent order dated 14th May, 1993 was right order passed by the respondent authority and no illegality has been committed by the respondent authority as alleged.

I have considered the submissions made by the learned advocates for the parties. It is an admitted fact that by order dated 4.5.1991, pension of the petitioner has been fixed and the petitioner has also been granted gratuity and other benefits taking into account the total length of service put in by the petitioner and hence notional service of five years period and notional increment benefits were also granted to the petitioner. Such benefits given by the

respondents to the petitioner has continued for more than two years and, thereafter, all of a sudden, order granting pensionary benefits to the petitioner has been changed which is adverse to the petitioner, without giving any opportunity of hearing whatsoever. Pension is considered to be legal right and such right cannot be adversely affected by the other side without giving reasonable opportunity of being heard to the person concerned. In the instant case, the petitioner has not been given any opportunity before passing the order dated 14.5.1993 whereby his initial pension has been withheld and reduced which is having adverse effect and civil consequences against the civil rights of the petitioner. The petitioner ought to have been heard and ought to have been given reasonable opportunity to submit his case before passing such an order adverse to the petitioner's civil rights. Therefore, according to my opinion, since the petitioner was not given any opportunity whatsoever before passing such an order adverse to him, the order is required to be quashed and set aside on the ground of violation of the principles of natural justice. However, while quashing and setting aside the impugned order dated 14.5.1993, the respondents are required to be directed to re-examine the matter while keeping in view the Government Resolution dated 3rd February, 1978 item No. (iv) and (vii) as well as the relevant provisions of Rule 57A (ii) of the Bombay Civil Services Rules, 1959 and to pass appropriate order in accordance with law after giving reasonable opportunity of being heard to the petitioner. Therefore, in view of these facts and circumstances of the case, without considering the merits of the matter, present petition is required to be allowed.

For the aforesaid reasons, this petition is allowed. Order dated 14.5.1993 passed by the respondents is hereby quashed and set aside. It is directed to the respondents No. 2 and 4 to consider the representation of the petitioner dated 21st October, 1993 made by the petitioner to the Accounts Officer while taking into account the Government Resolution dated 3rd February, 1978 and also considering the relevant item No.(iv) and (viii) of the said resolution as well as relevant provisions of rule 57A (ii) of the Bombay Civil Service Rules, 1959. Respondents NO. 2 and 4 are also directed to give an opportunity of personal hearing to the petitioner and to give reasonable opportunity to the petitioner while considering the representation of the petitioner and before passing appropriate orders on such representation and then to pass appropriate orders in accordance with law within three months from the date of

receipt of copy of this order and to communicate such order to the petitioner. In case any order adverse to the petitioner is passed by the respondent authority after hearing the petitioner, same shall not be implemented for a period of one month from the date of communication of such order to the petitioner. Rule is accordingly made absolute in terms indicated hereinabove with no order as to costs. Direct Service is Permitted.

Dt. 20.12.2001. (H. K.Rathod,J.)
Vyas